

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NEXTEC APPLICATIONS, INC.,

Plaintiff,

V.

BROOKWOOD COMPANIES, INC.,  
and THE HALLWOOD GROUP, INC.,

Defendants.

Case No. 07 CV 6901 (THK) (RJH)

## DEFENDANT’S STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Local Civil Rule 56.1 of the Local Rules of this Court, Defendant Brookwood Companies, Inc. (“Brookwood”) states the following as facts that should be undisputed and that may be relevant to the disposition of the present motion.

1. This action was initiated by Nextec on July 31, 2007 for the alleged infringement of five United States patents, U.S. Patent Nos. 5,418,051 (originally assigned to Fabric Coating Corporation of Carlsbad, CA); 5,856,245, 5,869,172; 6,071,602; and 6,129,978.

2. Brookwood Companies, Inc. (“Brookwood”) is a leading supplier of specialty fabrics, including consumer and industrial fabrics, that are used in a wide variety of settings. Brookwood, directly and through relevant predecessors, has been engaged in the manufacture of specialty industrial fabrics for over 40 years. Montie Decl. ¶ 2.

3. Coated fabrics manufactured by Brookwood and its predecessors have been used for many years to manufacture products for a variety of outdoor applications where weather resistant properties are required, including the manufacture of tents, backpacks and protective outer wear, such as rain gear, for use in a variety of consumer, as well as military, applications. Montie Decl. ¶ 2. Brookwood and its relevant predecessors have also been

leading suppliers to the United States for many years and believes that it is one of the largest suppliers of woven nylon fabrics used by the United States Government. *Id.* at ¶3.

4. Nextec's claims in this action relate in substantial part to the provision by Brookwood of coated fabrics used in the manufacture of apparel for ultimate supply to the United States Military pursuant to a government contract. More specifically, these fabrics were supplied by Brookwood to apparel manufacturers for use in manufacturing protective outer wear that is part of the so-called "Generation III Extended Cold Weather Clothing System" used by the Military, as also referred to simply as "Gen III." Montie Decl. ¶¶ 5-6.

5. The specific contract at issue in this case, No. W911QY-07-D0003, was awarded to Atlantic Diving Supply, Inc. ("ADS") of Virginia Beach, VA as the prime contractor effective December 20, 2006. Montie Decl. ¶ 5.

6. The fabrics supplied by Brookwood were used in the manufacture of garments referred to as the co-called "Level V" and "Level VII" jackets and trousers. These fabrics were used as face fabric and liners for these garments. Montie Decl. ¶ 8.

7. The commercial documents related to Brookwood's relevant fabric shipments, typically refer to the specific government contract with ADS. Montie Decl. ¶ 9 and Exh. B (Order from Proper International). The fabrics shipped in response to these orders were accompanied by a form certifying compliance of the fabrics with standardized tests required by the U.S. government contract with ADS. A representative Department of Defense Form 1222 related to a representative shipment accompanies Mr. Montie's Declaration in support of the present Motion. Montie Decl. ¶ 10 and Exh. C.

8. The relevant provisions incorporated by reference in the government contract with ADS include the standard “authorization and consent” clause from Title 48 of the Code of Federal Regulations, Section 52.227-1. Montie Decl. ¶ 5 and Exh. A (excerpts of contract).

9. The fabrics manufactured by Brookwood to the Level V and VII specifications were inspected and approved by a government representative prior to shipment to garment manufacturers. Montie Decl. ¶ 11.

10. It is Brookwood’s understanding that the fabrics it manufactured to these government specifications and delivered to garment manufacturers were used to manufacture garments that were supplied to ADS for use in satisfaction of government contract number W911QY-07-D0003. Montie Decl. ¶¶ 11-12.

Dated: June 30, 2008

New York, NY

Respectfully submitted,

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